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| 10/766,893 | 01/30/2004 | Shinichi Takahashi | 03670.002260 | 4193 |
| 5514 7590 08/15/2008 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112 | | | | |
| EXAMINER | | | | |
| POND, ROBERT M | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/766,893

Applicant(s)

TAKAHASHI ET AL.

Examiner

Robert M. Pond

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 12-14,35-37,58-60,81-83,93-98,100-107,109-116,118-125,127 and 128.

DETAILED ACTION

Response to Amendment

Applicants amended claims 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128. Claims 1-11, 15-34, 38-57, 61-80, 84-92, 99, 108, 117 and 126 were canceled. All pending claims 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 were examined in this non-final office action necessitated by new grounds of rejection.

Response to Arguments

Applicant's arguments, see Remarks, filed 16 May 2008, with respect to the rejection(s) of claim(s) 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection under 35 USC 102(e) has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sone and Florence and supporting references. Florence teaches a delivery system that presents a plurality of ETAs to a consumer, one of which is chosen by the consumer.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 12-14, 35-37, 58-60, 81- 83, 93, 95, 102, 104, 111, 113, 120 and 122 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) in view of Florence (US 2002/0007299).**

Sone teaches a system and methods of continuously monitoring and updating delivery schedules based on customer modifications prior to delivery. See at least abstract; Figs. 1-6; col. 1-col. 3. Sone further teaches:

- Regarding claim 35. Sone teaches all the above as noted under the 103(a) rejection and teaches i) calculating an estimated time of arrival to a destination for at least one in-transit unit having the product number (ETAs are calculated for each in-transit delivery-see at least Fig. 1, Fig. 2; col. 5, lines 17-48; product number used for tracking-see at least Fig. 5; col. 8, lines 50-53), ii) a due date associated with the estimated time of arrival by which a diversion request must be completed to cause the quantity of in-transit units to be diverted (prior notice time determined that indicates the amount of prior notice requested by the customer before a delivery is attempted; determining how far in advance to notify the customer. Default time established if not specified-see at least col. 5, lines 49-54; col. 6, lines 64-66) and iii) wherein the diversion request is based in part on the estimated time of arrival (diversion request based in part of

ETA. -see at least Fig. 3A-B; col. 6, line 48-col. 7, line 21). Although Sone does not mention providing the customer with a plurality of ETAs, Florence on the other hand teaches a product delivery system that presents to the consumer a plurality of delivery window times (note: ETAs) from which the consumer chooses. See at least abstract; Fig. 5; 0036. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Florence of providing the consumer with a plurality of delivery ETAs would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Florence to the teachings of Sone would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

Sone and Florence further teach and suggest:

- Regarding claim 35. transmitting product inquiry information including the product number; system determines whether a customer has placed a request for a different delivery time or location. See at least Fig. 3B (68); col. 7, lines 7-8.

- Regarding claim 35. receiving the plurality of estimated time of arrivals and the due date; recalculates ETA for the changed delivery as well as the remaining deliveries. See at least col. 7, lines 38-48.
- Regarding claim 35. and transmitting the diversion request to cause the quantity of in-transit units to be diverted. System notifies delivery employee of changes. See at least Fig. 3B (78, 80); col. 8, lines 4-7.
- Regarding claim 36. acknowledgement that delivery has been diverted to final destination. See at least Fig. 4; col. 8, lines 16-34.
- Regarding claim 37. receiving a product purchase order including the product number, the quantity, and a customer identifier; service receives the purchase order (item or item(s), product tracking number, customer ID or name) (see at least Fig. 5; col. 8, line 40-col. 9, line 3), and transmitting an acknowledgement that the product purchase order has been accepted. goods purchased online must be given to a delivery service (see at least col. 1, lines 23-28; implied that purchase order is accepted by delivery service), diverting the quantity of in-transit units of that product number to a final destination based on the customer identifier. Customer enters customer ID or product number or name to divert shipment. See at least Fig. 5 (90).
- Regarding claim 102. as noted above.
- Regarding claim 104. collecting inventory information and transmitting a current inventory value for one of the plurality of destinations. Aware

of amount of deliveries for each delivery location. See at least col. 6, lines 28-37.

- Regarding claims 12-14, 58-60, 81- 83, 93, 95, 111, 113, 120 and 122. Rejections are based on the teachings and rationale as noted above.

2. Claims 94, 96, 103, 105, 112, 114, 121 and 123 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) and Florence (US 2002/0007299) as applied to claims 12, 35, 58 and 81, further in view of Suzuki (US 6,470,323).

- Regarding method claim 103, Sone and Florence teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) making an online purchase, ii) delivering an amount of product to a delivery destination associated with a customer name or customer ID and iii) making changes to delivery time or location while the shipment is in-transit. Although Sone and Florence do not mention collecting sales history information and transmitting a sales history value corresponding to one the plurality of destinations, Suzuki on the other hand teaches a goods sales management system making decisions based on customer purchase history and delivery history. See at least abstract; Fig. 1; col. 1, lines 50-55. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Suzuki would have yielded predictable results and resulted in an improved system. It

would have been recognized that applying the technique of Suzuki to the teachings of Sone and Florence would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 94, 112 and 121. Rejections are based on the same rationale as noted above for claim 103.
- Regarding method claim 105, Sone and Florence teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone and Florence do not mention collecting back order information and transmitting a current back order value for one of the plurality of destinations, Suzuki on the other hand teaches transmitting out-of-stock messages to customers and ordered-goods-arrival messages (note: backordered goods have arrived). See at least Fig. 7 and 8; col. 4, lines 47-52. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Suzuki would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Suzuki to the teachings of Sone and Florence would have yielded predictable results

because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 96, 114, and 123. Rejections are based on the same rationale as noted above for claim 105.

3. Claims 100, 101, 109, 110, 118, 119, 127 and 128 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) and Florence (US 2002/0007299) as applied to claims 12, 35, 58 and 81, further in view of Jenkins (US 20020188499, IDS entered 20 December 2007).

- Regarding method claims 109 and 110, Sone and Florence teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone and Florence do not mention calculating a suggested quantity of in-transit units to divert to one of the plurality of destinations, Jenkins on the other hand teaches a system and methods used to optimally resolve conflict between companies with regards to product availability and further teaches making recommendations to customers based on shipment allocation determination calculations taking into consideration inventory constraints and other factors. See at least

abstract; 0027, 0029, 0057, 0088, 0138. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Jenkins would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Jenkins to the teachings of Sone and Florence would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems.

Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 100, 101, 118, 119, 127 and 128. Rejections are based on the same rationale as noted above for claims 109 and 110.

4. Claims 97, 98, 106, 107, 115, 116, 124 and 125 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) and Florence (US 2002/0007299) as applied to claims 12, 35, 58 and 81, further in view of Aklepi (US 6,795,823).

- Regarding method claims 106 and 107, Sone and Florence teach and suggest all the above as noted under the 103(a) rejection and teach and suggest i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone and Florence do not mention a quantity of in-transit

units is represented by a number or containers holding the at least one in-transit unit; transmitting. Aklepi on the other hand teaches article routing and tracking system and method for optimally routing an article through a network of processing stations, and can re-calculate the route at every stop based on updated information. See at least abstract; Fig. 1; col. 1, line 5 through col. 6, line 41. Aklepi provides a system and method to de-consolidate an in-transit shipment of an article or plurality of articles and provide estimated time of arrivals for each de-consolidated article of an optimized route. Aklepi further teaches containers containing in-transit articles (i.e. item, units) representing a quantity of in-transit units and being able to track an article within a container. See at least col. 8, line 16-col. 10, line 12. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Aklepi would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Aklepi to the teachings of Sone and Florence would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 97, 98, 115, 116, 124 and 125. Rejections are based on the same rationale as noted above for claims 106 and 107.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/
Primary Examiner, Art Unit 3625
August 13, 2008